



**2019 County and District Clerks' Association
of Texas Winter Education Conference**

January 28-31, 2019

Embassy Suites by Hilton Hotel Conference Center & Spa, San Marcos

Piece of the Puzzle, Part of the Whole

Breakout 3: Admin

- FMLA Administration
- Scenario's

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FMLA Administration

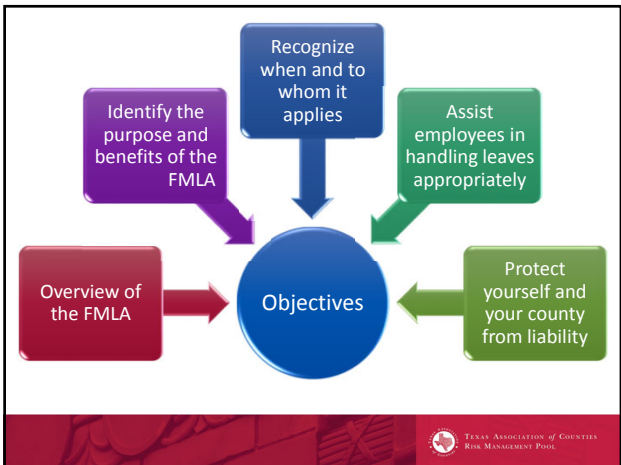
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Disclaimer

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The Triangle

Family Medical Leave Act (FMLA)

Americans with Disabilities Amendments Act (ADAAA) can't be disregarded

Texas Workers' Compensation (WC)



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RISK MANAGEMENT POOL

Family Medical Leave Act (FMLA)

U.S. Department of Labor

Wage and Hour Division

2016 New Poster



Effective August 5, 1993

Revised 1995, 2008, 2009, 2010, 2013, 2016

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Family Medical Leave Act

- FMLA applies to all public agencies
- All counties with 50 or more employees employed within 75 miles of the workplace must grant FMLA to eligible employees



Seasonal and temporary employees count towards the 50, but not elected officials!

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How FMLA Helps Employees

- ✓ It allows them to take off for family and medical issues
- ✓ It provides benefits without interruption
- ✓ It “guarantees” reinstatement to the same or equivalent job



FMLA Eligibility

Employee has worked for county for at least 12 months

- Break >7 years not counted unless military call up
- >3 years burden on employee

&

Has worked at least 1250 hours during the last 12 months prior to FMLA Leave

- Part-timers and long-term temps might qualify

&

All time lost due to military service is counted as time worked



What is FMLA?

FMLA = Leave Entitlement

- Can be paid leave but the law does not require it to be paid.
- County policy dictates when to pay FMLA.

TIP– Require in policy use of all paid time off to be used under FMLA



Paid or Unpaid FMLA?

FMLA allows for substitution of paid leave for unpaid leave including:

- Vacation, personal or sick leave
- Compensatory Time Off
- Short Term Disability Leave
- Workers' Compensation Leave



FMLA Allows 12 Weeks Leave For



A newly born, adopted or foster-placed child



A spouse, child or parent with a serious health condition



The employee's own serious health condition



Serious Health Condition – Definition

- Overnight Stay in Hospital
- Lasts for > 3 full days
- 1 visit to health care provider within first 7 days and a regimen of continuing treatment (prescription)
- 2 visits to health care provider within first 30 days of incapacity
- Chronic, serious health condition (2 visits/year)
- Physical or Mental Health Issues
- Pregnancy or Prenatal



Military Qualifying Exigency Leave

Qualified employee can receive 12 weeks of leave in a 12 month period for:

Spouse, child or parent of the employee is being deployed to a foreign country.

Reserves National Guard
Regular Armed Forces



Does not extend FMLA 12 weeks.



Military Qualifying Exigency Leave

Defined as...



Military Qualifying Exigency Leave

- ✓ Leave to care for military members parent
- ✓ Arranging for alternative care
- ✓ Attending meetings with staff at care facility
- ✓ Can require copy of military members rest and recuperation leave orders or other military documentation

Intermittent FMLA

May be taken when medically necessary to care for a seriously ill family member or because of the employee's own serious health condition.

(usually chronic conditions)



Intermittent Leave

May be taken to care for a newborn, newly adopted or newly placed foster child with county approval.



Medical Certifications

County may require
(give employees 15
days to obtain)

Can only require
intermittent leave
recertification every 6
months

include a copy of the
job description or
essential functions on
or before the
designation notice is

Privacy requirements
must be met

Supervisor is never
allowed to contact the
physician to clarify
the information
provided

Employer Notification

Post the notice approved by the Secretary of Labor – Applicants must have access

Include information about employee rights in handbook

Must provide written notice designating leave as FMLA

Other FMLA Information

- Poster must be posted where all employees and all applicants have access, \$110 fine for failure to do so.
- Needed to care for a family member with a serious health condition does not require that the employee be the only person available to provide the care – care does include “psychological care”

FMLA and Benefits

- Insurance premiums must continue to be paid
- Employees are entitled to any new benefits
- Changes of benefits notices must also be provided to employees on FMLA
- If employee chooses not to continue benefits while on leave, they must immediately be reinstated upon return

If FMLA is Exhausted, What Next?

Have a policy in place to offer employees COBRA at the end of their 12 weeks



Review the employee's status and condition



Begin the interactive process to determine and DOCUMENT your actions. Not every leave under the FMLA will have the ADAAA protection but evaluation is important



Tips Going Forward

Forced Use Allowed



Letter Ruling FMLA-68



Letter Ruling Problem



What now?

- ✓ Don't interfere with an employees rights to FMLA/MFL
- ✓ Don't retaliate against any employee for taking or asking for FMLA/MFL
- ✓ Remember as a supervisor – if you violate an employee's rights under the FMLA, you may be **personally liable**.
- ✓ Make certain your FMLA/MFLA policies are up to date



What now?

- ✓ Make certain you use the new FMLA/MFL forms
- ✓ Make certain you have the new FMLA/MFL posters up and available to all employees and applicants
- ✓ Make sure all supervisors in your county understands the changes to the FMLA/MFL

Questions?



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Scenario

- ✓ Lisa, has chronic back pain and starts missing work due to flare-ups.

She missed 2 days last week and now she is on her 3rd day off.


What do we need to do now?



Scenario

- ✓ Bob's wife calls you and tells you Bob has been admitted to the hospital. She has no idea what is wrong or how long he might be out.

What do we need to do now?



Scenario

- ✓ Jill is currently in the hospital. It has been 16 days since you sent her the medical certification.

What do we need to do now?



Scenario

- ✓ Bob's 28 year old daughter is going to have a baby. She has severe diabetes, as well, and needs help managing her diabetes. Her doctor has now place her on bedrest for pre-eclampsia. She needs daddy to come take care of her.

What do we need to do now?



Scenario

- ✓ Sue's husband is deployed overseas and his mother had a stroke and is need of care.

What do we need to do now?